

1 the parties. (Ct. Rec. 46.)

2 **COMPLAINT**

3 Plaintiffs instituted the captioned matter by filing a
4 Complaint in Asotin County, Washington, on March 8, 1993, alleging
5 breach of a lease / option to purchase agreement entered into
6 between Plaintiffs and Defendant Arthur Gillespie.¹ On April 14,
7 1993, Notice of Removal to federal court was filed by Co-Defendant
8 Industrial Leasing on grounds of diversity of jurisdiction. (Ct.
9 Rec. 1.) The Notice alleged Plaintiffs were residents of
10 Washington, Defendant Industrial Leasing was an Oregon corporation,
11 and Defendant Arthur Gillespie was a resident of California.

12 On June 30, 1993, Plaintiffs moved for entry of default against
13 Defendant Gillespie on grounds of failure to appear and defend.
14 (Ct. Rec. 3.) On July 9, 1993, following consent to proceed before
15 a magistrate judge by Industrial Leasing, the matter was referred
16 pursuant to 28 U.S.C. § 636(c) to the Honorable James B. Hovis for
17 all further proceedings. (Ct. Rec. 5.) Defendant Gillespie, who
18 remained in default, did not consent. On August 10, 1993, the
19 magistrate judge entered an Order of Default pursuant to FED. R. CIV.
20 P. 55(a).² (Ct. Rec. 10.) Following the submission of additional
21

22 ¹The Complaint also alleged claims against Co-Defendant
23 Industrial Leasing, an Oregon corporation, involving the same
24 equipment; the parties settled and Industrial Leasing was dismissed
25 on December 16, 1993. (Ct. Rec. 5, 22.)

26 ²The file reflects a Judgment was entered on August 11, 1993
27 (Ct. Rec. 11); based on the proceedings which followed, the court

28 MEMORANDUM AND ORDER FOLLOWING EVIDENTIARY HEARING, GRANTING
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1 affidavits setting forth the basis for a money judgment against
2 Defendant Gillespie, on September 20, 1993, the magistrate judge
3 entered an Order of Default Judgment pursuant to FED. R. CIV. P.
4 55(b)(2) against Mr. Gillespie for the sum of \$45,656.67.³ (Ct.
5 Rec. 19.) The Order was accompanied by a Judgment for that amount.
6 (Ct. Rec. 20.)

7 Nearly ten years later and without judicial collection efforts,
8 on August 28, 2003, Plaintiffs filed an Assignment of the judgment,
9 conveying all right, title and interest to the Credit Bureau of
10 Lewiston Clarkston, Inc., Lewiston, Idaho. (Ct. Rec. 23.) On
11 August 28, 2003, the assignee, through counsel, moved to renew the
12 Judgment, then calculated at \$100,099.42, based on an alleged post-
13 judgment legal rate of interest of 12%. (Ct. Rec. 24.) An Amended
14 Motion for Renewal was filed by the assignee on September 8, 2003,
15 re-calculating the legal rate of interest at 3.38%, and reducing the
16 balance owed to \$63,660.53. (Ct. Rec. 28.) The Motion was stricken
17 with leave to renew by a district judge on September 9, 2003, noting
18 the absence of an acknowledged assignment of interest. (Ct. Rec.
19 34.) The Motion was re-filed on September 12, 2003, with an

20 _____
21 construes this Judgment as one adjudging liability only, not
22 damages.

23 ³That amount represents \$35,000, plus accrued interest due and
24 owing after Defendant Gillespie allegedly exercised his option to
25 purchase the leased equipment. (Ct. Rec. 18, Joanne Moss Supp. Aff.)
26 Because of the default, the alleged exercise of that option has not
27 been tested by evidentiary showing.

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1 acknowledged Assignment by Plaintiffs. (Ct. Rec. 35.) On September
2 15, 2003, Chief Judge Van Sickle renewed the judgment pursuant to
3 FED. R. CIV. P. 69 and R.C.W. 6.17.020(1).⁴ (Ct. Rec. 37.) A Renewed
4 Judgment was filed by the Clerk on September 15, 2003, within the
5 initial ten year life of the money judgment signed on September 20,
6 1993. (Ct. Rec. 38.)

7 On May 26, 2005, Defendant Gillespie moved to set aside the
8 Renewed Judgment as void for want of jurisdiction under the long-arm
9 jurisprudence of the State of Washington. (Ct. Rec. 39.) An
10 evidentiary hearing was held October 19, 2005. Mr. and Mrs.
11 Gillespie were present with counsel, testified, and were cross-
12 examined. Mr. and Mrs. Moss also were present with counsel,
13 testified, and were cross-examined. Additionally, Plaintiffs
14 presented the testimony of attorney Ron T. Blewett of Lewiston,
15 Idaho. Following the evidentiary hearing before the undersigned,
16 the parties were permitted additional time to submit legal memoranda
17 to the court. Those briefs were submitted and reviewed by the
18 court. (Ct. Rec. 53, 54.)

19 **FACTS**

20 **1. Undisputed Facts**

21 The testimony of both parties at the evidentiary hearing
22 supports the following undisputed facts: (1) Defendant Gillespie
23 initiated contact with Plaintiff regarding the lease of and/or
24 option to purchase the logging equipment at issue; however, that
25

26 ⁴The Washington statute provides for renewal of a judgment for
27 an additional ten years as a matter of right.

1 contact was made to a telephone listing in the State of Idaho; (2)
2 a lease / option to purchase agreement was negotiated by the parties
3 and Defendant received delivery of the equipment in California for
4 use in that state; (3) Defendant Gillespie paid in full the rental
5 fee for the first five of the six month lease (from a California
6 account into an Idaho bank account); (4) the sublease agreement and
7 option were completed and signed by the parties at Plaintiffs'
8 residence in Asotin County, Washington, on the 23rd or 24th of
9 September 1992; (5) Defendant Gillespie spent no more than two hours
10 at the residence; (6) there have been no judicial efforts to collect
11 the judgment since it was entered in 1993, other than renewal of the
12 judgment in 2003 by the assignee; and (7) Defendant Gillespie
13 suffered two serious strokes that resulted in hospitalization, some
14 memory loss, and rehabilitation during the spring of 1993 when the
15 lawsuit was commenced, and during that time, his business affairs
16 were conducted by his spouse.

17 **2. Notice to Defendant Gillespie**

18 There is no dispute Defendant Gillespie was personally served
19 with a Summons and Complaint, Jury Demand, Notice of Intent to Take
20 Deposition, and Plaintiffs' First Request for Production of
21 Documents on April 7, 1993, in Lake Almanor, California. (Ct. Rec.
22 9, att.) Defendant Gillespie also was mailed the Notice of Removal
23 at his address in Redding, California (Ct. Rec. 1), and Notice of
24 Intent to Renew the Judgment in 2003 at his address in Fernley,
25 Nevada. (Ct. Rec. 27, 29.) Also, there is undisputed evidence
26 Defendant Gillespie contacted a Spokane attorney for the purpose of
27 securing representation to defend the lawsuit in August 1993.

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1 However, no agreement for representation was reached. Additionally,
2 it is uncontested Defendant Gillespie made no effort to appear pro
3 se in this court or to contact Plaintiffs' counsel prior to 2005.

4 **RULE 60(b)(4)**

5 There is no time limit on a Rule 60(b)(4)⁵ motion to set aside
6 a judgment as void. 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND
7 PROCEDURE, § 2862, Rule 60 (1973); *Bookout v. Beck*, 354 F.2d 823, 824-
8 25, (9th Cir. 1965). Moreover, a void judgment cannot acquire
9 validity because of laches on the part of the judgment debtor. *Id.*
10 The Tenth Circuit has stated that "[i]n the interest of finality,
11 the concept of setting aside a judgment on voidness grounds is
12 narrowly restricted." *V.T.A. Inc. v. Airco, Inc.*, 597 F.2d 220, 224
13 (10th Cir. 1979); see also *Jones v. Giles*, 741 F.2d 245, 248 (9th Cir.
14 1984), citing *Lubben v. Selective Service System Local Bd. 27*, 453
15 F.2d 645, 649 (1st Cir. 1972). While absence of subject-matter
16 jurisdiction may make a judgment void, such total want of
17 jurisdiction must be distinguished from an error in the exercise of
18 jurisdiction. A Rule 60(b)(4) motion is not to be used as a
19 substitute for the appellate process or for challenging jurisdiction
20 in the first instance. *Kocher v. Dow Chemical Co.*, 132 F.3d 1225,
21 1229 (8th Cir. 1997). If a party who has been served in the

22
23 ⁵FED. R. CIV. P. 60(b) provides in pertinent part, "[o]n motion
24 and upon such terms as are just, the court may relieve a party or
25 his legal representative from a final judgment, order, or proceeding
26 for the following reasons: . . . (4) the judgment is void."
27

1 underlying action permits the entry of a default judgment, the
2 burden of proof in a later Rule 60(b)(4) motion rests with the
3 defaulted party. *Burda Media Inc. v. Viertel*, 417 F.3d 292, 298 (2nd
4 Cir. 2005) (holding on a motion to vacate a default judgment when
5 the defaulting defendant had actual notice of the original
6 proceeding but delayed in bringing the motion, defendant bears the
7 burden of proof); *Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398,
8 401 (7th Cir. 1986) (when defendant ignored process and challenged
9 default judgment on a Rule 60(b)(4) motion, defendant bears the
10 burden of proving an absence of personal jurisdiction); *CSC*
11 *Holdings, Inc. v. Fung*, 349 F. Supp. 2d 613, 616 (E.D.N.Y. 2004)
12 (“[a] defendant with notice of the proceedings bears the burden of
13 establishing the claim that service was not properly effected”);
14 *Sartor v. Utica Taxi Ctr., Inc.*, 260 F. Supp. 2d 670, 677 (S.D.N.Y.
15 2003) (same); *Velez v. Vassallo*, 203 F. Supp. 2d 312, 324-25 & n.10
16 (S.D.N.Y. 2002) (same).⁶

17 For purposes of this analysis, the court concludes Defendant
18 Gillespie bears the burden of refuting Plaintiffs’ allegations of
19 minimum contacts with the State of Washington by “compelling
20 evidence.” *Sinatra v. Natl Enquirer, Inc.*, 854 F.2d 1191, 1201 (9th
21 Cir. 1988). Defendant disputes such contact occurred and asserts
22 the negotiations took place and were substantially completed in
23

24 ⁶See Theresa L. Kruk, Annotation, WHO HAS BURDEN OF PROOF IN
25 PROCEEDING UNDER RULE 60(B)(4) OF FEDERAL RULES OF CIVIL PROCEDURE TO HAVE
26 DEFAULT JUDGMENT SET ASIDE ON GROUND THAT IT IS VOID FOR LACK OF JURISDICTION,
27 102 A.L.R. Fed. 811 (1991 & Supp. 1999) (noting split in circuits).

1 states other than Washington, including Idaho, Oregon, and
2 California. The discussion that follows incorporates the
3 undersigned's findings as to disputed facts and presents alternative
4 legal bases for the conclusions reached.⁷

5 **MAGISTRATE JUDGE JURISDICTION**

6 Preliminarily, this court, *sua sponte*, must decide whether the
7 absence of Defendant Gillespie's consent deprived the magistrate
8 judge of authority to enter the default judgment in September 1993.
9 *Callier v. Gray*, 167 F.3d 977, 979 (6th Cir. 1999) (court has the
10 right to raise *sua sponte* question of jurisdiction including the
11 authority of a magistrate judge to act without consent of the
12 parties). FED. R. CIV. P. 55(a) provides for entry of default against
13 a party when that party has failed to plead or otherwise defend.
14 FED. R. CIV. P. 55(b)(1) provides for entry of default judgment by the
15 Clerk when the claim is for a sum certain and absent a showing of
16 incompetency or minority of the defaulting party. The pleadings on
17 file establish there was some question as to the sum of damages
18 sought; additional affidavits were sought by the court. Thus, it
19 was appropriate for the district court to consider the default under
20 FED. R. CIV. P. 55(b)(2). *Conetta v. National Hair Care Centers,*
21 *Inc.*, 186 F.R.D. 262, 268 (D.R.I. 1999), *judgment affirmed* 236 F.3d
22 67 (1st Cir. 2001). That section also provides that if "it is
23

24 ⁷The court recognizes, in some respects, the equities may lie
25 with Plaintiffs; however, because of statutory and case law setting
26 forth the limits of jurisdiction as to both the magistrate judge and
27 long-arm, the court is constrained to find for Defendant Gillespie.

1 necessary for the court to determine the amount of damages or to
2 establish the truth of any averment by evidence or make an
3 investigation of any other matter," the court may conduct such
4 hearings or order such reference as necessary.

5 A magistrate judge's authority is set forth at 28 U.S.C. §
6 636(b)(1)(A), which permits a district judge to designate a
7 magistrate judge to hear and determine any pretrial matter except
8 for judgment on the pleadings. A determination of damages and entry
9 of default judgment as to those damages is not considered a pretrial
10 matter. *Callier*, 167 F.3d at 982, citing *Estate of Conners v.*
11 *O'Connor*, 6 F.3d 656, 659 (9th Cir. 1993). Under Section (1)(B), a
12 district court judge may also designate a magistrate judge to
13 conduct hearings, including evidentiary hearing and submit proposed
14 findings of fact and recommendations. No recommendation was issued
15 here. Under Section (b)(3), a magistrate judgment could be assigned
16 additional duties not inconsistent with the Constitution and laws of
17 the United States. However, this section has been interpreted to
18 limit those duties as consistent with the overall statutory scheme
19 set out in section 636, subject to the district judge's ongoing
20 supervision. *Callier*, at 982-983. Finally, under section (c), with
21 consent of the parties, a magistrate judge may conduct all
22 proceedings, including the entry of judgment. Absent such reference
23 and/or consent, only the district court may direct entry of default
24 judgment. *Conetta*, at 268, citing *Jackson v. Beech*, 636 F.2d 831,
25 835 (D.C.Cir. 1980); *Combs v. Coal & Mineral Management Servs.,*
26 *Inc.*, 105 F.R.D. 472, 474 (D.D.C. 1984); *Highdata Software Corp. v.*
27 *Kothandan*, 160 F. Supp. 2d 167, 168 (D.N.H. 2001) (magistrate judge

1 lacked authority to determine liquidated damages absent reference or
2 consent); *Callier*, 167 F.3d at 982 n.8 (addressing application of
3 section (c) with respect to referral resulting in default judgment).
4 Thus, while it was appropriate to refer the default matter for
5 resolution of the damages question to Magistrate Judge Hovis, absent
6 Defendant Gillespie's consent, Judge Hovis had no authority to enter
7 an order of default judgment against him. The magistrate judge's
8 authority was limited to a recommendation only.⁸ *Callier*, at 983.

9 The question now is whether Chief Judge Van Sickle's Order
10 renewing the judgment removed any jurisdictional flaw. The renewal
11 of a judgment is not a simple, ministerial act. *In re Lobherr*, 282
12 B.R. 912 (Bankr. C.D.Cal. 2002). It requires the filing of a Motion
13 and notice to the debtor, permitting the debtor to file any legal or
14 factual objection to the renewal. Here, Defendant Gillespie was
15 served by mail at a Fernley, Nevada address, but failed to respond
16 or object. However, the court need not reach the issue of whether
17 the voidability of the original default judgment was cured by the
18 district court action because of the findings and conclusions set
19 forth below.

20 LONG-ARM JURISDICTION

21 In both federal and state jurisprudence, a default judgment in
22 a civil case is void if there is no personal jurisdiction over the
23

24 ⁸This ruling as to Defendant Gillespie does not affect the
25 jurisdiction of the magistrate judge to rule as to claims against
26 Industrial Leasing in light of their consent in writing to such
27 jurisdiction. (Ct. Rec. 5.)

1 defendant. See, e.g., *United States v. Kramer*, 225 F.3d 847, 857
2 (7th Cir. 2000). If no federal statute governing personal
3 jurisdiction is applicable, this court, sitting in diversity,
4 applies the Washington State long-arm statute. *Core-Vent Corp. v.*
5 *Nobel Indus. AB*, 11 F.3d 1482, 1484 (9th Cir. 1993), citing *Hylwa,*
6 *M.D., Inc. v. Palka*, 823 F.2d 310, 312 (9th Cir. 1987). Under
7 Washington's long-arm statute, a court may exercise personal
8 jurisdiction over a party if there is a showing that a party
9 transacted business in the state. R.C.W. 4.28.185. If such
10 "minimum contacts" are demonstrated, and assuming proper notice of
11 the suit, due process is satisfied. In the final analysis, the
12 question is whether the district court's exercise of jurisdiction
13 offended "traditional notions of fair play and substantial justice."
14 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945),
15 quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

16 The "constitutional touchstone" of the exercise of a state
17 court's jurisdiction over a non-resident defendant is "whether the
18 defendant purposefully established 'minimum contacts' in the forum
19 State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)
20 (quoting *International Shoe Co.*, 326 U.S. at 316). It is essential
21 the defendant "purposefully avails itself of the privilege of
22 conducting activities within the forum State." *Burger King*, 471
23 U.S. at 475. The party's conduct and connection with the forum
24 state must be such that the party could reasonably anticipate being
25 haled into court there. *Id.* at 474. Moreover, sufficient contacts
26 with the forum state must exist so the assertion of personal
27 jurisdiction over the party comports with "fair play and substantial

1 justice." *Id.* at 476; *International Shoe*, 326 U.S. at 320.

2 Under Washington law, personal jurisdiction over a nonresident
3 defendant is appropriate based solely on one purposeful contact with
4 the state, so long as the cause of action arose from that contact
5 and assertion of jurisdiction would be reasonable. *Langlois v. Deja*
6 *Vu, Inc.*, 984 F. Supp. 1327, 1333 (W.D. WA. 1997), citing
7 *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408
8 (1984). Under the minimum contacts test used by the State of
9 Washington, long-arm jurisdiction is appropriate when: (1) the
10 nonresident Defendant initiated some purposeful contact with the
11 State of Washington; (2) Plaintiff's claim arose from the out-of
12 state contact; and (3) the exercise of personal jurisdiction would
13 be reasonable, considering Washington's interest in adjudicating the
14 dispute versus the burden on a non-resident of defending in
15 Washington. *Tyee Construction Co. v. Dulien Steel Products, Inc.*,
16 62 Wn. 2d 106, 381 P. 2d 245 (1963).

17 APPLICATION OF TYEE ANALYSIS

18 1. Plaintiffs' Basis for Long-Arm Jurisdiction

19 Plaintiffs testified their business, Ray Moss Logging, was
20 initially set up as a sole proprietorship, but is now a limited
21 liability corporation. The business office is located at the Moss
22 residence in Asotin County, Washington. Joanne Moss testified
23 appropriate taxes are paid to the State of Washington, including
24 unemployment, industrial insurance and business and occupation
25 taxes. Industrial insurance is effective in other states by virtue
26 of an inter-jurisdictional compact. The business name is also
27 registered with Nez Perce County, Idaho, and a post office box is

1 maintained in Lewiston, Idaho. The logging equipment owned or
2 leased by Ray Moss Logging, including the equipment at issue, was
3 located at the various job sites throughout the Northwest, including
4 Oregon, Washington, and Idaho, and, at the conclusion of a job,
5 would be transported to the next site. The business did not
6 maintain a permanent storage facility. Plaintiffs also testified
7 they own recreational property in the State of Idaho that is
8 accessible only by jet boat. That address is used to obtain
9 favorable Idaho industrial/manufacturing sales tax exemptions when
10 purchasing logging equipment.

11 Plaintiffs assert they negotiated and signed the agreement with
12 Defendant Gillespie in Asotin County. They filed suit in Washington
13 because that is their residence, the agreement was executed at that
14 location, and they consider their business a Washington entity.

15 **2. Purposeful Initiation of Contact with the State of Washington**

16 Defendant Gillespie testified his initial contact with
17 Plaintiffs regarding the availability of the equipment for use in
18 California was made to an Idaho telephone number⁹ obtained from his
19 employer, Weaver Equipment of Susanville, California. Defendant
20 Gillespie was employed by Weaver as a sales associate. After
21 contacting Culver Logging of Susanville about other matters,
22

23 ⁹There was testimony the Idaho number was in fact the Mosses'
24 daughter's telephone number; nonetheless, sufficient information was
25 obtained during that phone call for Defendant Gillespie and his
26 spouse to partially complete the written lease agreement during
27 their road trip to the Lewiston / Clarkston area.

1 Defendant Gillespie learned they were interested in a specific John
2 Deere feller buncher owned by Ray Moss Logging. Defendant Gillespie
3 called an Idaho telephone number from California, talked with
4 Plaintiff and learned the equipment was available for inspection in
5 Granite, Oregon. He accompanied a representative of Culver to
6 Oregon in September 1992, where they inspected the machine.
7 Although Culver was not interested, Defendant Gillespie was as a
8 personal business pursuit. He contacted Plaintiff again from
9 California, informed him he was interested in leasing the machine
10 for use in California, and they roughed out terms for a sublease.
11 The two agreed to meet to finalize the agreement. Using a John
12 Deere lease form agreement from Weaver Equipment, Defendant Jean
13 Gillespie stated she penned in some of the terms on that form as
14 they drove from California to Idaho. The terms of the agreement
15 were completed and the agreement signed at the Moss residence in
16 Clarkston, Washington, on September 24. Neither Mr. or Mrs.
17 Gillespie had ever been in the Lewiston / Clarkston area before and
18 testified they were not aware they were in the State of Washington
19 when the agreement was signed. For purposes of this analysis, the
20 court does not credit that statement as Plaintiffs' address was
21 inserted on the form agreement at the home and indicated Clarkston,
22 Washington.

23 When personal jurisdiction over a nonresident defendant is
24 based on contract negotiations with a Washington business, "the
25 court must examine the negotiations and the contemplated future
26 consequences of the contract to determine" whether the nonresident
27 purposefully availed himself of the privilege of conducting business

1 in Washington. *Langlois*, 984 F. Supp. at 1333, citing *F.D.I.C. v.*
2 *British-American Ins. Co.*, 828 F.2d 1439, 1443 (9th Cir. 1987).
3 "Even if an out-of-state Defendant initiated purposeful contact
4 giving rise to this lawsuit, jurisdiction still may be unreasonable
5 as to that Defendant." *Langlois*, 984 F. Supp. at 1334. Based on
6 these facts, the court concludes the "quality" of the contact with
7 the State of Washington during the negotiation phase was such that
8 it was not reasonable for Defendant Gillespie to foresee the
9 possibility of having to defend a lawsuit in the State of
10 Washington. *Langlois*, 984 F. Supp. at 1334, citing *Burger King*
11 *Corp.*, 471 U.S. at 478 (mere execution of a contract with a
12 Washington corporation is insufficient to establish personal
13 jurisdiction over a nonresident Defendant). As for future
14 consequences, there was no anticipation by either party that further
15 negotiations or dealings would occur in the State of Washington in
16 light of the fact the equipment was shipped to California for use in
17 that state and any final purchase would involve an Oregon
18 corporation.

19 **3. Claim vis-a-vis Contact**

20 It is undisputed the terms of the lease agreement were fully
21 performed except for payment of the sixth month; the damages
22 obtained by Plaintiffs (\$35,000 plus interest) and the allegations
23 in their Complaint arise solely from Defendant's failure to exercise
24 their option to purchase the equipment. (Ct. Rec. 1 at 3.) A
25 contract which has not yet been fully completed or performed, or in
26 which the obligation relates to some future event, is an executory
27 contract. *Felt v. McCarthy*, 130 Wn.2d 203, 212, 922 P.2d 90 (1996)

(concurring opinion). Thus, for purposes of the *Tyee* analysis as to whether the cause of action arose from the contact Defendants had with the State of Washington in September 1992, this court finds it did not. Any claim enforcing the exercise of the option to purchase would have involved additional negotiation by the parties in March 1993 and the ownership interest of Industrial Leasing. Under their contractual terms with Ray Moss Logging, venue as to any claim involving the equipment was set in Multnomah County, Oregon.¹⁰ Thus, the court cannot find Defendant Gillespie's limited contact with the state in September 1992 gave rise to the claim at issue.

4. Interest of the State of Washington

Factors appropriate in an analysis of whether the State of Washington is the appropriate forum are the following: (1) the extent of the defendant's purposeful contact(s), (2) the burden on Defendant of having to defend in Washington, (3) the extent to which jurisdiction conflicts with the sovereignty of Defendant's resident state; (4) Washington's interest in adjudicating the dispute, (5) a determination of which forum is the most efficient, (6) Plaintiffs' interest in choosing the Washington forum, and (7) the existence of an alternative forum. *Langlois*, at 1334, citing *F.D.I.C. v. British-American, Ins. Co.*, 828 F.2d 1439, 1443 (9th Cir. 1987).

As for the first factor, as discussed previously, Defendant's contact with Plaintiffs and the State of Washington, was minimal, limited only to finalizing the terms and executing the lease terms in Asotin County. As to the second factor, Defendant would have

¹⁰See Exhibit 17 at 2, admitted without objection.

1 experienced considerable burden in defending a lawsuit in the State
2 of Washington in light of his residence in California, the fact he
3 was in business for himself, the condition of his health, and the
4 location and use of the equipment in California. As to the third
5 factor, there has been no showing Washington's jurisdiction
6 conflicted in some respect with the sovereignty of California or
7 Nevada, Plaintiffs' states of residence during the time at issue.
8 Thus, this issue weighs in favor of Washington's exercise of
9 jurisdiction. Fourth, Washington's interest was limited to
10 protecting the business interests of Ray Moss Logging; however,
11 testimony demonstrated Ray Moss Logging took advantage of the
12 business protection afforded it by both the State of Washington and
13 the State of Idaho. Additionally, Ray Moss Logging agreed to venue
14 in the State of Oregon with respect to any conflict arising from the
15 contract with Industrial Leasing. Thus, Washington's interest does
16 not override the interests of the other states. Fifth, given the
17 nature of the lawsuit and the venue requirements of the contract
18 between Plaintiffs and Industrial Leasing, any claim involving
19 purchase of the equipment contractually resided with the State of
20 Oregon. Thus, prosecution of the lawsuit in Oregon would have been
21 the most efficient. Sixth, Plaintiffs have demonstrated no interest
22 in choosing the State of Washington, other than the fact they reside
23 here. Testimony demonstrated their business interests and normal
24 business obligations lay equally distributed among the States of
25 Washington, Idaho, and Oregon. Payments on the underlying lease
26 were made to a bank account in Idaho. The contract form for the
27 lease by Defendant Gillespie was obtained from a California business

1 and anticipated use of the equipment was in that state. Collection
2 of any judgment obtained would have necessarily had to occur in
3 states other than Washington. Finally, an alternative forum as to
4 any claim arising from the option to purchase resided by contractual
5 terms with the State of Oregon. After consideration of the seven
6 factors, the court concludes only the fourth supports jurisdiction
7 in Washington.¹¹ Thus, Defendants have demonstrated by compelling
8 evidence that prosecution of the action in Washington offended
9 "traditional notions of fair play and substantial justice."
10 *International Shoe*, 326 U.S. at 316. The ensuing judgments entered
11 by this court were void *ab initio*.

12 **ADMISSION OF EXHIBITS**

13 Defendants moved for the admission of documents (**Ct. Rec. 49**)
14 and state records related to the conduct of Plaintiffs' business in
15 the States of Washington and Oregon. In light of the above analysis
16 Defendants' Motion is **DENIED AS MOOT**.

17 **ATTORNEY FEES**

18 Defendant Gillespie seeks an award of attorney fees under
19 R.C.W. 4.28.185(5). That provision provides for an award of fees to
20 a nonresident defendant served outside the state and who prevails in
21

22 ¹¹The Complaint also alleged a claim of fraud in violation of
23 the Consumer Protection Act of the State of Washington. Plaintiffs
24 have not provided legal analysis to support jurisdiction of such a
25 claim separate from that asserted for the contractual claim. Thus,
26 the court considers Plaintiff's position as to the entry of default
27 judgment as to the tort claim abandoned.

1 the action. Under Washington law, a nonresident party who secures
2 a dismissal because of improper jurisdiction may be awarded attorney
3 fees, at least to the extent the costs of litigation exceed any
4 defense costs he would have incurred in a resident court. *Scott*
5 *Fetzer Co., Kirby Co. Div. v. Weeks*, 114 Wn.2d 109, 786 P.2d 265
6 (1990). Defendant Gillespie failed to respond to this litigation
7 for almost 13 years. During that time, Plaintiffs incurred the cost
8 of renewing the judgment and now are foreclosed by the statute of
9 limitations from testing the merits of their claim in the
10 appropriate forum. Accordingly, the Motion is **DENIED**.

11 **IT IS ORDERED:**

12 1. Defendant Gillespie's Motion for Relief From Void Judgment
13 (**Ct. Rec. 39**) is **GRANTED**. The judgment against Defendant Gillespie
14 shall be set aside as void.

15 2. Defendant's Motion for an award of attorney fees and costs
16 (**Ct. Rec. 39**) is **DENIED**.

17 3. Defendants' Motion to Admit Official Documents (Exhibits
18 1 - 14) (**Ct. Rec. 49**) is **DENIED AS MOOT**.

19 4. Judgment shall be entered for Defendant Gillespie and the
20 file shall be **CLOSED**. Each party shall bear its own costs.

21 DATED November 15, 2005.

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23 S/ CYNTHIA IMBROGNO
24 UNITED STATES MAGISTRATE JUDGE
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